

## 25 CFR Part 585

### **PART 585—APPEALS TO THE COMMISSION ON WRITTEN SUBMISSIONS OF NOTICES OF VIOLATION, PROPOSED CIVIL FINE ASSESSMENTS, ORDERS OF TEMPORARY CLOSURE, THE CHAIR'S DECISIONS TO VOID OR MODIFY MANAGEMENT CONTRACTS, THE COMMISSION'S PROPOSALS TO REMOVE A CERTIFICATE OF SELF-REGULATION, AND NOTICES OF LATE FEES AND LATE FEE ASSESSMENTS**

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**Authority:** 25 U.S.C. 2706, 2710, 2711, 2712, 2713, 2715, 2717.

**Source:** 77 FR 58945, Sept. 25, 2012, unless otherwise noted.

#### **§ 585.1 What does this part cover?**

(a) This part applies to appeals of the following where the appellant does not elect a hearing before a presiding official and instead elects to have the matter decided by the Commission solely on the basis of the written submissions:

- (1) Violation(s) alleged in a notice of violation under § 573.3 of this chapter;
  - (2) Proposed civil fine assessments under part 575 of this chapter;
  - (3) Orders of temporary closure under § 573.4 of this chapter;
  - (4) The Chair's decisions to void or modify a management contract under part 535 of this chapter subsequent to initial approval;
  - (5) The Commission's proposals to remove a certificate of self-regulation under part 518 of this chapter; and
  - (6) Late fee notifications and assessments under part 514 of this chapter.
- (b) Appeals from these actions involving a hearing before a presiding official are brought under part 584 of this chapter.

#### **§ 585.2 Who may appeal?**

- (a) Appeals of notices of violation, proposed civil fine assessments, orders of temporary closure, proposals to remove certificates of self-regulation, and late fee notifications and assessments may only be brought by the tribe or the recipient that is the subject of the action.
- (b) Appeals of the Chair's decision to void or modify a management contract after approval may only be brought by a party to the management contract.

**§ 585.3 How do I appeal a notice of violation, proposed civil fine assessment, order of temporary closure, the Chair's decision to void or modify a management contract, the Commission's proposal to remove a certificate of self regulation, and notices of late fees and late fee assessments?**

Within 30 days after the Chair serves his or her action or decision, or the Commission serves notice of its intent to remove a certificate of self-regulation, the appellant must file a notice of appeal with the Commission. The notice of appeal must reference the action or decision from which the appeal is taken and shall include a written waiver of the right to an oral hearing before a presiding official and an election to have the matter determined by the Commission solely on the basis of written submissions. Unless the Commission has extended the time for filing an appeal brief pursuant to § 580.4(f) of this subchapter, the appeal brief must be filed within 30 days of service of the record pursuant to § 585.6. The appeal brief shall state succinctly the relief sought and the supporting ground(s) therefor, and may include supporting documentation.

**§ 585.4 Are motions permitted?**

(a) Motions for extension of time under § 580.4(f) of this subchapter, motions to supplement the record under § 581.5 of this subchapter, motions to intervene under § 585.5, and motions for reconsideration under § 581.6 of this subchapter, are permitted. All other motions may be considered at the discretion of the Commission.

(b) The Chair shall not, either individually or through counsel, file or respond to motions.

**§ 585.5 How do I file a motion to intervene?**

(a) An entity or individual, whether acting on his or her own behalf or as an agent of another entity, not permitted to appeal, may be permitted to participate as a party to a pending appeal if the Commission finds that:

- (1) The final decision could directly and adversely affect it or the class it represents;
- (2) The individual or entity may contribute materially to the disposition of the proceedings;
- (3) The individual's or entity's interest is not adequately represented by existing parties; and
- (4) Intervention would not unfairly prejudice existing parties or delay resolution of the proceeding.

(b) A tribe with jurisdiction over the lands on which there is a gaming operation that is the subject of a proceeding under this part may intervene as a matter of right if the tribe is not already a party.

(c) A motion to intervene shall be submitted to the Commission within 10 days of the notice of appeal. The motion shall be filed with the Commission and served on each person who has been made a party at the time of filing. The motion shall succinctly state:

- (1) The moving party's interest in the proceeding;
- (2) How his or her participation as a party will contribute materially to the disposition of the proceeding;
- (3) Who will appear for the moving party;
- (4) The issues on which the moving party seeks to participate; and
- (5) Whether the moving party seeks to present witness affidavits.

- (d) Objections to the motion must be filed by any party within 10 days after service of the motion.
- (e) A reply brief to the brief in opposition may be filed within 5 days of service of the brief in opposition.
- (f) When motions to intervene are made by individuals or groups with common interests, the Commission may request all such movants to designate a single representative, or the Commission may recognize one or more movants.
- (g) The Commission shall give each movant and party written notice of the decision on the motion. For each motion granted, the Commission shall provide a brief statement of the reason(s) for the decision. If the motion is denied, the Commission shall briefly state the ground(s) for denial. The Commission may allow the movant to participate as *amicus curiae*, if appropriate.

**§ 585.6 When will I receive a copy of the record on which the Chair relied?**

Within 10 days of the filing of a notice of appeal, or as soon thereafter as practicable, the record will be transmitted to the appellant.

**§ 585.7 When will the Commission issue its decision?**

- (a) The Commission shall issue its decision within 90 days: After it receives the appeal brief; or its ruling on a request for intervention, if applicable; or after the conclusion of briefing by the parties, whichever comes later, unless the subject of the appeal is whether to dissolve or make permanent a temporary closure order issued under § 573.4 of this chapter, in which case, the Commission shall issue its decision within 30 days of conclusion of briefing by the parties.
- (b) The Commission shall serve the final decision upon the appellants.